

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISCELLANEOUS CIVIL APPLICATION NO.245 OF 2017

Mrs. Rabab Rajabali Wishiwala @

Mrs. Rabab Husen Vohara

...Applicant

Vs.

Rajabali Shabbuir Wishiwala

....Respondent

Mr. Amey Deshpande along with Mr. Ajit Mandlik for the Applicant.

Mr. R.V. Govilkar, instructed by Govilkar & Associates, for the Respondent.

CORAM: S. J. KATHAWALLA, J.

DATE: 11th August, 2017

P.C.:

1. The above Misc. Application has been filed by the Applicant wife seeking transfer of the Petition bearing M.P. No. 25 of 2016 and Guardianship Petition No. 26 of 2015 filed by the Respondent husband in the Family Court at Pune to the Court of Civil Judge, Senior Division, Panvel.
2. At the outset, I must record that meetings were held in my Chambers to assist the parties to arrive at an amicable settlement. However, the same were not successful.
3. It is submitted by the Applicant that her marriage with the Respondent was solemnized on 2nd May, 2008 at Mumbai, as per Dawoodi Bora Muslim

(Shia) customs, rites and rituals. At the time of the marriage, the Applicant and her parents were informed that the Respondent works in Kuwait as a Manager in a private company. The Applicant and the Respondent are blessed with a son named Burhanuddin who is presently four years old.

4. Disputes arose between the parties and according to the Applicant, she along with minor Burhanuddin are staying with her parents at Neral since 21st December, 2014.

5. The Respondent has filed Marriage Petition bearing No. 25 of 2016 seeking restitution of conjugal rights and has also filed Guardianship Petition No. 26 of 2015 under Section 25 of the Guardians and Wards Act, 1890 seeking custody of the child (who is four years old) before the Family Court-2, Pune.

6. The Applicant has filed a Petition before the Learned Judicial Magistrate, First Class, Karjat, being M.C.A. No. 180 of 2016 under Sections 12, 14, 15, 17, 18, 19, 20, 22 and 23 of the Protection of Women from Domestic Violence Act, 2005. The Applicant has also filed a Petition before the Learned Judicial Magistrate, First Class, Karjat, being M.C.A. No.264 of 2016 under Section 125 of the Code of Criminal Procedure, 1973. It is the Applicant's case that she has filed criminal complaints against the Respondent on various occasions before the Pune Police Station and Neral Police Station at Neral. The copies of the criminal complaints filed by the Applicant are annexed and marked as Exhibit-F to the

above Application.

7. The Learned Advocate appearing for the Applicant has submitted that the distance between Neral to Pune is 280 kilometres to and fro. She has been threatened by the Respondent with dire consequences and the Applicant therefore apprehends danger to her life at Pune. She is surviving at the mercy of her parents and there is no one to accompany her to Pune.

8. The learned Advocate appearing for the Applicant submitted that the Respondent is, since the last several years in Kuwait. He comes twice every month from Kuwait to have access to the minor child at Neral, where the Applicant resides and it is only with the intention of causing harassment to the Applicant that the Respondent is insisting that the Petition filed by him at Pune seeking restitution of conjugal rights should proceed at Pune and the Applicant wife should come from Neral to Pune to contest the said Petition. It is submitted that the Applicant is willing to cooperate with the Respondent and by consent have the dates and timings fixed before the Court at Panvel in M.P. Petition No. 25 of 2016 and Guardianship Petition No. 26 of 2015, only on days when the Respondent visits Karjat (Neral) to have access to their minor son or when he attends proceedings filed by the Applicant wife under the Protection of Women under the Domestic Violence Act and under Section 125 of the Code of Criminal Procedure before the Courts at Karjat.

9. Both the parties have made several allegations against each other. In fact, as recorded in my Order dated 23rd June, 2017 passed in Civil Application (St.) No. 16370 of 2017, from the Orders passed by the Learned Judge of the Family Court, Pune, it is clear that there is severe acrimony between the parties including on the issue of access to the minor son and the Learned Judge has in fact recorded that the child is a victim of the acrimony. I need not go into the allegations and counter allegations made by the parties against each other in the present Application which pertains only to the transfer of proceedings filed by the Respondent-husband before the Court at Panvel since the wife resides at Neral, and the Respondent comes all the way from Kuwait to Neral twice a month to have access to the minor child who is only four years old. The Family Court after considering the conduct of the parties and considering the fact that the child is in his formative years, granted access to the Respondent-husband on every second Friday and Saturday of the month and every fourth Friday and Saturday of the month at the Public Garden, Neral (where the wife resides), between 10.00 a.m. and 3.00 p.m. By the same Order, the Respondent is also directed to pay Rs. 15,000/- per month as ad-hoc interim maintenance to the wife. The Family Court has thereafter changed the venue of access from the Public Garden, Neral to Bori Masjid, near Neral Railway Station. The mosque authorities were also requested to arrange for an appropriate place so that the

father and child could meet each other and be comfortable.

10. The Respondent has stated that for availing the access he takes a flight from Sharjah to Mumbai and arrives at 4.00 a.m. on Friday morning. From Mumbai Airport he comes to Neral by 8.30 a.m. and gets access to his son by 10.00 a.m. Thereafter by 7.30 p.m. he reaches Pune and on the following morning comes back to Karjat (Neral), takes access to the child upto 3.00 p.m. and thereafter goes to Mumbai Airport for his flight back to Sharjah.

11. Since the Respondent has submitted that he is scared to stay in Neral in the night because of threats received from the Applicant's family members and the Applicant has also made a similar grievance, the Advocate for the Respondent husband Mr. Govilkar, in the presence of the mother of the Respondent, on the last date of hearing submitted that since the marriage between the parties was solemnised at Mumbai and since the Respondent husband has to reach Mumbai to come to Neral or Pune, the matter be transferred to the Family Court at Bandra. There was no opposition from the Respondent and/or his family members. However, the Applicant was uncomfortable with the idea of coming all the way from Neral to Mumbai. Today in the morning session, when the matter was called out, this Court made an attempt to convince the Applicant to have the matter transferred to Mumbai. Mr. Govilkar too agreed that the matter be transferred to Mumbai. However, the

mother of the Respondent, upon getting an impression that the Applicant wife may agree to the matter being transferred to the Family Court at Bandra, Mumbai, all of a sudden took a very adamant and egoistic stand in Court and insisted that the Applicant should travel to Pune to defend the proceedings. I have observed and noted that in most of such matters, it is the other family members of the spouses who come in the way of an order being passed by consent of the spouses.

12. In the circumstances since the Respondent is a resident of Kuwait and he comes from Kuwait/Sharjah to Neral where the Applicant wife resides to have access to his child, for which according to him he spends an amount of Rs. 1.20 lakhs per month, and during his visit only goes to Pune to sleep for one night, and keeping in mind that the Respondent is now regularly visiting Neral to take access to the child and no untoward incident as apprehended by him has occurred till date and also since the Respondent shall be attending the proceedings filed by the Applicant under the Protection of Women under Domestic Violence Act, 2005 and under Section 125 of the Code of Criminal Procedure, before the Courts at Karjat, I am of the view that this is a fit case to transfer the proceedings filed before the Pune Court to the Court at Panvel, as sought by the Applicant. Hence the following Order:

(i) Petition No. 25 of 2016 and Guardianship Petition No. 26 of 2015 filed by

the Respondent-husband before the Family Court at Pune is transferred to the Court of the Civil Judge, Senior Division, Panvel;

- (ii) The Registrar, Family Court, Pune shall ensure that the papers and proceedings in Petition No. 25 of 2016 and Guardianship Petition No. 26 of 2015 reach the Court of the Civil Judge, Senior Division, Panvel in the week commencing 20th November, 2017;
- (iii) The parties and/or their Advocates shall appear before the Court of Civil Judge, Senior Division, Panvel on 27th November, 2017 at 11.00 a.m. and obtain necessary directions.
- (iv) The Civil Judge, Senior Division, Panvel shall endeavour to dispose of Petition No. 25 of 2016 and Guardianship Petition No. 26 of 2015 within a period of six months from 27th November, 2017.
- (v) The Learned Civil Judge, Senior Division, Panvel shall not grant any adjournments to the parties unless absolutely necessary. The parties too shall not apply for any adjournment unless absolutely necessary. However, the learned Judge is requested that on days when the Respondent personally wants to attend the matters, the same may be fixed keeping in mind the days and timings when the Respondent Husband visits Karjat (Neral) to meet his child or on days when he attends the proceedings filed under the Domestic Violence Act and under Section 125

of the Code of Criminal Procedure before the Courts at Karjat.

- (vi) All contentions of the parties are kept open.

Despite this Order being ready, the same was not uploaded for some time, only in the hope that the regular visits of the Respondent to Neral for having access to his son, may also bring the parties closer so as to enable them to resolve their differences. Since this has not happened, and also as this Court is no longer seized of this assignment, the Order is uploaded on 27th October, 2017.

(S.J. KATHAWALLA, J.)